

November 4, 2004

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: Natural Resources Defense Council

Date of Filing: October 4, 2004

Case Number: TFA-0074

On October 4, 2004, Meyer & Glitzenstein filed an Appeal from a determination issued to their client Natural Resources Defense Council (NRDC) on September 14, 2004, by the Albuquerque National Nuclear Security Administration (NNSA) Service Center of the Department of Energy (DOE/AL) in response to a request for documents that NRDC submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require that DOE/AL perform an additional search for responsive material.

I. Background

On July 24, 2004, NRDC filed a FOIA request with DOE's NNSA Service Center in Oakland for various records concerning DOE clean-up activities at the Energy Technology Engineering Center (ETEC) portion of the Santa Susana Field Laboratory (SSFL) in Simi Valley, California. Letter from NRDC to FOIA Officer, Oakland NNSA Service Center (July 24, 2004) (Request). On August 6, 2004, DOE/AL transferred the request to the DOE/HQ FOIA Office for additional processing by the DOE/HQ Office of Environmental Management, which agreed to respond to one item of the request. Request at 2. According to DOE/AL, the FOIA officer then contacted the Program Manager for ETEC at the former Oakland Operations Office, now a part of DOE/AL. The Program Manager located some responsive records and then forwarded those records to the requester. Letter from DOE/AL to NRDC (September 14, 2004) (Determination Letter). NRDC contends that DOE has failed to identify any internal records concerning whether the cleanup complies with government regulations, whether an environmental impact statement is required, or how DOE would address comments on the draft environmental assessment. Letter from NRDC to Director, OHA (October 4, 2004) (Appeal) at 1. According to NRDC, "since the agency simply must have generated such records, DOE's search thus far is patently deficient." *Id.* In the Appeal, NRDC challenged the adequacy of the search and asks OHA to direct DOE/AL to search again for responsive information.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v.*

Department of State, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Glen Milner*, 17 DOE ¶ 80,102 (1988).

DOE/AL informed us that upon receipt of the request, they contacted the Program Manager (PM) for the ETEC program at the old Oakland Operations Office. Electronic Mail Message from Carolyn Becknell, DOE/AL to Valerie Vance Adeyeye, OHA (October 28, 2004). The PM, who has been with this project for over 10 years, stated that he is the holder of all material related to the environmental assessment (EA). Because the EA was conducted in the field and he was the EA document manager at the end of the process, the PM considered his files to be “the most complete.” *Id.* In addition to reviewing his own files, the PM also reviewed the files of two individuals who were directly involved with this project. The PM reviewed all emails for responsiveness. *Id.* He even reviewed email messages of personnel who no longer work in the field, since he was copied on many emails due to his position on the project. The PM found some responsive material, which DOE/AL sent to the requester with the Determination Letter.

DOE/AL also informed us that during the reorganization of NNSA, personnel from the former Oakland Operations and Nevada Operations Offices became part of the new NNSA Service Center in Albuquerque. During this reorganization, a large group of archived emails were lost, but have been located since DOE/AL issued the Determination Letter. The PM is reviewing these files and has agreed to forward any and all responsive material directly to the requester. Electronic mail message from Caroline Becknell, DOE/AL to Valerie Vance Adeyeye, OHA (October 19, 2004).

NRDC has not presented any evidence that the internal memoranda it discusses in its Appeal exist. It is possible that the responsive material that NRDC contends “simply must have been generated” does not exist, or may be located in the newly recovered archived emails. As stated above, DOE/AL is currently reviewing those files and will send any responsive material to NRDC. After reviewing the record of this case, we find that DOE/AL conducted a search that was reasonably calculated to uncover the requested information. Accordingly, this Appeal should be denied.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Natural Resources Defense Council on October 4, 2004, OHA Case Number TFA-0074, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: November 4, 2004